

**Letter of Findings Number: 04-20120534P  
Negligence Penalty  
For the Periods 2009 through 2011**

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**ISSUE**

**I. Tax Administration – Negligence Penalty.**

**Authority:** IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the ten percent negligence penalty.

**STATEMENT OF FACTS**

Taxpayer operates a gas station and convenience store in Indiana. The Indiana Department of Revenue (the "Department") conducted a sales and use tax audit of Taxpayer for the tax years 2009 through 2011. As a result of the Department's audit, Taxpayer was assessed additional sales tax, penalty, and interest (the "Liabilities"). Taxpayer entered into a payment plan with the Department to fulfill the Liabilities. Taxpayer timely protested the assessment of the negligence penalties which were included in the payment plan. Taxpayer requested that the Department's final determination be made based on the information in its file. This Letter of Findings ensues. Further facts will be supplied as required.

**I. Tax Administration – Negligence Penalty.**

**DISCUSSION**

Taxpayer protests the imposition of the negligence penalties assessed pursuant to the Department's sales and use tax audit of Taxpayer for the periods 2009 through 2011. Taxpayer states that it "will make every effort to keep up with the payments." Taxpayer asks that the Department abate the assessed negligence penalties because it is a small retail operation that does not have enough monthly cash flow to make even the regular monthly payments. Taxpayer states that it is coming up with the extra money from other businesses it owns and from personal resources.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Indiana law requires Taxpayer to demonstrate that it had reasonable cause for not collecting and remitting the sales tax due. In order to establish reasonable cause, Taxpayer must demonstrate that it exercised "ordinary business care and prudence" in conducting the duties from which the additional tax and penalty arose. [45 IAC 15-11-2\(c\)](#).

The Department assessed Taxpayer the 10 percent negligence penalty because Taxpayer had a significant amount of fuel purchased that was unaccounted for in Taxpayer's records. It is these large discrepancies in

Taxpayer's records that resulted in significant adjustments to gasoline and diesel fuel sales for the audit periods. Taxpayers are required to keep books and records sufficient to allow the Department to determine a taxpayer's tax liabilities. IC § 6-8.2-5-4(a).

Taxpayer has not made an affirmative showing of reasonable cause for not maintaining proper records or an explanation of the discrepancies pointed to in the audit. Therefore, the Department finds that Taxpayer has not made an affirmative showing of reasonable cause for not collecting and not remitting sales tax for the tax years 2009 through 2011 and therefore the negligence penalties will not be abated.

**FINDING**

Taxpayer's protest is respectfully denied.

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